

McGREGOR W. SCOTT
United States Attorney
MATTHEW C. STEGMAN
Assistant U.S. Attorney
501 I Street, Suite 10-100
Sacramento, California 95814
Telephone: (916) 554-2700

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
Plaintiff,) CR. NO. S-04-0352-MCE
v.) MOTION TO DISMISS
ANTHONY ALLAN VALLIER,) INDICTMENT; ~~[PROPOSED]~~ ORDER
Defendant.)

Plaintiff United States of America, by and through its undersigned counsel, pursuant to Rule 48(a), Fed. R. Crim. P., submits this motion to dismiss without prejudice the indictment filed in this case against ANTHONY ALLAN VALLIER on September 22, 2004.

The defendant has filed a motion to suppress evidence, based in part on a technical omission in the search warrant affidavit regarding the defendant's residence address and facts tying that address to the location of the computer containing child pornography. Although this was a technical oversight by the officer drafting the search warrant affidavit, based on the holding in the

1 Ninth Circuit case of United States v. Hove, 848 F.2d 137 (1988), it
2 appears that the warrant is deficient. Further, it appears from the
3 Hove holding that although the officer relied on the warrant in good
4 faith, the government cannot rely upon the good faith reliance of
5 the officer under United States v. Leon, 468 U.S. 897 (1984).

6 Therefore, the government moves to dismiss the indictment
7 without prejudice.

8 DATED: October 5, 2005

Respectfully submitted,

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10 McGREGOR W. SCOTT
United States Attorney

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12 /s/ Matthew C. Stegman
MATTHEW C. STEGMAN
Assistant U.S. Attorney

13
14 Order

15 The indictment against ANTHONY ALLAN VALLIER in this case,
16 filed September 22, 2004, is dismissed without prejudice.

17 IT IS SO ORDERED.

18 DATED: October 13, 2005

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE